

***United States Court of Appeals
for the Second Circuit***



**BRIEF FOR
APPELLEE**

74-1649

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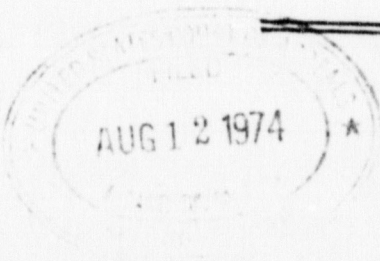
United States Court of Appeals
FOR THE SECOND CIRCUIT

EXXON CORPORATION, successor by merger to
ESSO INTERNATIONAL, INC.,
Plaintiff-Appellee,
—against—

A. L. BURBANK & COMPANY, LTD.,
Defendant-Appellant,
—and—

UNITED STATES OF AMERICA,
Defendant-Appellee.

BRIEF FOR PLAINTIFF-APPELLEE
EXXON CORPORATION



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STATEMENT

The District Court in its Final Judgment entered March 14, 1974 (A 53a-54a):

- 1) Awarded the plaintiff-appellee, Exxon Corporation ("Exxon") a recovery of \$31,111.00 from defendant-appellant A. L. Burbank & Company, Ltd. ("Burbank") and
- 2) Dismissed the action as well as the cross-claim of Burbank against co-defendant-appellee United States of America ("U. S. A.").

It is apparent from Burbank's brief that Burbank has completely abandoned its appeal as against Exxon and has confined it to the dismissal of Burbank's cross-claim against U. S. A.

ISSUES PRESENTED

Although Burbank has failed to state separately "the issues presented for review" there is nothing in its brief that challenges so much of the judgment that holds it liable to Exxon, so that, with respect to Exxon, there is no issue presented.

POINT I

BURBANK'S BRIEF HAS CONFINED ITS APPEAL TO THE DISMISSAL OF ITS CROSS-CLAIM AGAINST U. S. A., HAS CONCEDED ITS LIABILITY TO PAY EXXON AND, CONSEQUENTLY, THE JUDGMENT SHOULD

BE AFFIRMED INSOFAR AS IT REQUIRES BURBANK TO PAY EXXON'S RECOVERY.

At page 2 of Burbank's brief, the appeal is confined to the dismissal of its cross-claim against U. S. A. as follows:

"This is an appeal by Burbank from that portion of the judgment which dismisses Burbank's cross-claim against U. S. A." (Emphasis added)

Further, on the same page, Burbank states:

"It is agreed by all parties herein that Exxon Corporation must be paid for the bunker fuel oil furnished in the aforesaid amount (A 31a, ¶8), but the question to be decided on this appeal is whether U. S. A. or Burbank is ultimately liable to pay for the bunker fuel oil. Burbank contends that U. S. A. is liable to it for the price of the oil, with interest and costs, that it must pay to Exxon Corporation." (Emphasis added)

At page 5, Burbank concedes that the contract involved "binds Burbank to pay Esso for the oil" as follows:

"On October 6, 1965, Esso International, Inc. ("Esso"), the predecessor of Exxon Corporation, furnished bunker fuel oil to the Vessel pursuant to Esso's standard form of contract with Burbank, dated March 5, 1965, which contract binds Burbank to pay Esso for the oil. (A 30a-31a, E1)."

Finally, Burbank's "CONCLUSION" at page 10 seeks only a reversal of the dismissal of "the cross-claim of Burbank against U. S. A." and judgment "in favor of Burbank

and against U. S. A. for \$31,111.00."

CONCLUSION

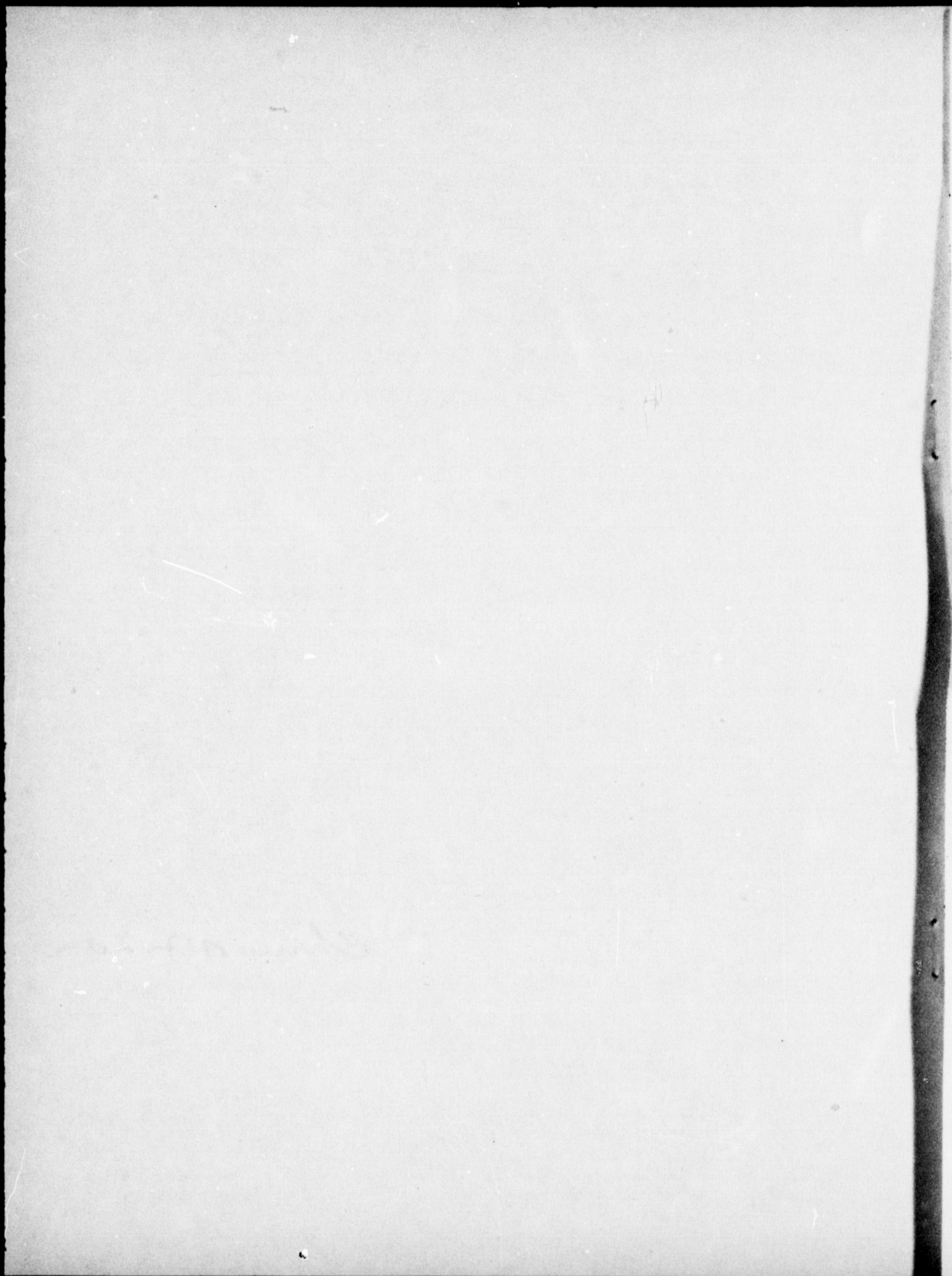
The judgment of the District Court should be affirmed with costs to the extent that it awards recovery to Exxon of and from Burbank of \$31,111.00

dated: August 8, 1974
New York, New York

Respectfully submitted,

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CERTIFICATE OF SERVICE

We hereby certify that two copies of the
within brief for the plaintiff-appellee were this day
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August 12, 1974

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